

UNITED STATES DEPARTMENT OF AGRICULTURE

Farm Service Agency
Washington, DC 20250

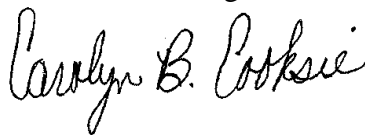
Notice FLP-323

1910-A, 1941-A, 1943-A,
3-FLP

For: State and County Offices

**Clarifying Eligibility of Non-U.S. Citizens and Applicants Convicted of Possessing
Controlled Substances and the Collection of Voluntary Ethnicity and Race Information**

Approved by: Deputy Administrator, Farm Loan Programs



1 Overview

A Background

FSA is revising FSA-410-1 and the instructions for completing FSA-410-1 to:

- verify citizenship or eligibility as a U.S. non-citizen national or qualified alien according to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) (8 U.S.C. §1611)
- update the certification related to abuse of controlled substances to include conviction for distribution or possession of a controlled substance (21 U.S.C. §862)
- comply with current OMB standards for the classification of Federal data on ethnicity and race.

Note: Revisions about citizenship and controlled substance restrictions for 2-FLP and guaranteed forms are forthcoming.

B Purpose

This notice:

- provides clarification of the documentation non-citizen nationals and qualified aliens need to provide to FSA to be considered for assistance
- provides clarification of the controlled substances certification required under FLP's
- provides clarification on the new categories for monitoring race and ethnicity
- informs State and County Offices that these changes are effective immediately.

Disposal Date

December 1, 2003

Distribution

State Offices; State Offices relay to County Offices

9-9-03

Page 1

1 Overview (Continued)

C Contact

State Offices shall refer questions about this notice to Cathy Quayle, Loan Making Division, at 202-690-4018.

2 Action

A Implementing Citizenship Requirements

Current direct farm loan instructions:

- require a recipient of FLP assistance to be a U.S. citizen or an alien lawfully admitted to the U.S. for permanent residence under the Immigration and Nationality Act (INA)
- provide that indefinite parolees are not eligible for assistance.

Under section 401 of PRWORA, FSA must determine that the applicant is a U.S. citizen, a U.S. non-citizen national, or a qualified alien according to the notice of interim guidance published by the Department of Justice (62 FR 61344, November 17, 1997).

A U.S. citizen is 1 of the following:

- a person, other than a child of a foreign diplomat, born in 1 of the several States or in the District of Columbia, Puerto Rico, Guam, the U.S. Virgin Islands, or the Northern Mariana Islands who has not renounced or otherwise lost his or her citizenship
- a person born outside of the United States to at least 1 U.S. citizen parent
- a naturalized U.S. citizen.

Generally, a U.S. non-citizen national is a person who is either of the following:

- born in American Samoa or Swains Island on or after the date the U.S. acquired American Samoa or Swains Island
- whose parents are U.S. non-citizen nationals.

Note: For the Service Center Information Management System (SCIMS), a non-citizen national is considered a citizen. For guidance on acceptable documentation, see Exhibit 1.

2 Action (Continued)

A Implementing Citizenship Requirements (Continued)

Qualified alien is defined under PRWORA (8 U.S.C. §1641) as 1 of the following:

- an alien who is lawfully admitted for permanent residence under INA
- an alien who is granted asylum under section 208 of INA
- a refugee who is admitted to the U.S. under section 207 of INA
- an alien who is paroled into the U.S. under section 212(d)(5) of INA for a period of at least 1 year
- an alien whose deportation is being withheld under section 243(h) of INA
- an alien who is granted conditional entry according to section 203(a)(7) of INA in effect before April 1, 1980
- an alien who is a Cuban/Haitian entrant as defined by section 501(e) of the Refugee Education Assistance Act of 1980
- an alien who, or whose child or parent, has been battered or subjected to extreme cruelty under section 431 of INA.

Notes: For guidance on acceptable documentation, see Exhibit 2.

If the documentation provided appears to be altered or counterfeit, or if the alien presents unfamiliar INS documentation, complete INS Form G-845, "Document Verification Request". Forward INS Form G-845 to the nearest INS District Office, "Attn: Immigration Status Verifier", for review. Fully readable copies (front and back) of the original immigration documents should be attached to INS Form G-845 when it is submitted to the INS District Office. The original documents should be returned to the applicant. There is a 10 workday INS processing period. Forms and location maps of INS District Offices may be found on the Internet at <http://www.immigration.gov/graphics/fieldoffices/statemap.htm>

2 Action (Continued)

B Implementing Controlled Substance Restrictions

Current regulations require certification that the applicant, as individuals, or that its members, if an entity, have not been convicted under Federal or State law of planting, cultivating, growing producing, harvesting, or storing a controlled substance. The applicant is ineligible for FLP assistance during the crop year of conviction and the 4 succeeding crop years.

In addition, under the Controlled Substances Act (21 U.S.C. §862), an individual may be ineligible for Federal benefits based on a conviction of any Federal or State offense for the distribution (trafficking) or possession of controlled substances. At the discretion of the court, applicants convicted of:

- distribution of controlled substances may be ineligible for Federal benefits:
 - for up to 5 years after the first conviction
 - for up to 10 years after the second conviction
 - permanently for a third or subsequent conviction
- possession of controlled substances may be ineligible for Federal benefits:
 - for up to 1 year upon the first conviction
 - for up to 5 years after a second or subsequent conviction.

The Abuse of Controlled Substances certification on FSA-410-1 has been revised to address convictions for distribution or possession of controlled substances. To implement this law, FSA will require applicants to certify that they are not ineligible for Federal benefits based on a conviction under this law. By signing FSA-410-1 for an entity, the signer is certifying for all members of the entity. Self-certifications on FSA-410-1 will be the only documentation required involving convictions for controlled substances.

2 Action (Continued)

C Implementing New Race and Ethnicity Categories

The revised OMB standards for ethnicity and race require the following categories:

- 2 categories on ethnicity:
 - Hispanic or Latino
 - Not Hispanic or Latino
- 5 categories on race:
 - American Indian or Alaskan Native
 - Asian
 - Black or African American
 - Native Hawaiian or Other Pacific Islander
 - White.

Race and ethnicity data should be entered into SCIMS on the Customer Information Screen. SCIMS currently provides the option of selecting an ethnicity and 1 or more racial designations. On the revised FSA-410-1, items 32 and 34, data on ethnicity and race is being collected separately and corresponds with the selections in SCIMS. Existing records in SCIMS should be modified when the information provided or observed on FSA-410-1 is different from that currently reflected in SCIMS. Race and ethnicity data for Management of Agricultural Credit will be retrieved from SCIMS, as provided for in Software Release No. 517.

Interim Guidance - Documentary Evidence of Status as a U.S. Non-Citizen National

Copies of the following documents will, when combined with satisfactory proof of identity (which will come from the document itself if it bears a photograph of the person to whom it relates), demonstrate that a person is a U.S. citizen or non-citizen national for purposes of Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. (To the extent citizenship or nationality of a child is relevant to a benefit eligibility determination, the documents should demonstrate the child's status rather than that of the parent.) The lists set forth in Paragraphs A and B below are drawn from existing guidance published by the Social Security Administration ("SSA") and regulations issued by the Immigration and Naturalization Service ("INS") regarding determination of U.S. citizenship and nationality; the lists in Paragraphs C through F are drawn solely from the SSA guidance. These lists are not exhaustive; you should refer to guidance issued by the agency or department overseeing your program to determine if it accepts documents or other evidence of citizenship not listed below.

A. Primary Evidence: (1) A birth certificate showing birth in one of the 50 States, the District of Columbia, Puerto Rico (on or after January 13, 1941), Guam, the U.S. Virgin Islands (on or after January 17, 1917), American Samoa, Swain's Island or the Northern Mariana Islands, unless the person was born to foreign diplomats residing in the U.S. Note: If the document shows that the individual was born in Puerto Rico, the U.S. Virgin Islands or the Northern Mariana Islands before these areas became part of the U.S., the individual may be a collectively naturalized citizen--see Paragraph C below. (2) United States passport (except limited passports, which are issued for periods of less than five years); (3) Report of birth abroad of a U.S. citizen (FS-240) (issued by the Department of State to U.S. citizens); (4) Certificate of birth (FS-545) (issued by a foreign service post) or Certification of Report of Birth (DS-1350) (issued by the Department of State), copies of which are available from the Department of State; (5) Certificate of Naturalization (N-550 or N-570) (issued by the INS through a Federal or State court, or through administrative naturalization after December 1990 to individuals who are individually naturalized; the N-570 is a replacement certificate issued when the N- 550 has been lost or mutilated or the individual's name has been changed); (6) Certificate of Citizenship (N-560 or N-561) (issued by the INS to individuals who derive U.S. citizenship through a parent; the N- 561 is a replacement certificate issued when the N-560 has been lost or mutilated or the individual's name has been changed); (7) United States Citizen Identification Card (I-197) (issued by the INS until April 7, 1983 to U.S. citizens living near the Canadian or Mexican border who needed it for frequent border crossings) (formerly Form I-179, last issued in February 1974); (8) Northern Mariana Identification Card (issued by the INS to a collectively naturalized citizen of the U.S. who was born in the Northern Mariana Islands before November 3, 1986); (9) Statement provided by a U.S. consular officer certifying that the individual is a U.S. citizen (this is given to an individual born outside the U.S. who derives citizenship through a parent but does not have an FS-240, FS-545 or DS-1350); or (10) American Indian Card with a classification code "KIC" and a statement on the back (identifying U.S. citizen members of the Texas Band of Kickapoos living near the U.S./Mexican border).

Interim Guidance - Documentary Evidence of Status as a U.S. Non-Citizen National (Continued)

B. Secondary Evidence: If the applicant cannot present one of the documents listed in A above, the following may be relied upon to establish U.S. citizenship or nationality: **(1)**Religious record recorded in one of the 50 States, the District of Columbia, Puerto Rico (on or after January 13, 1941), Guam, the U.S. Virgin Islands (on or after January 17, 1917)), American Samoa, Swain's Island or the Northern Mariana Islands (unless the person was born to foreign diplomats residing in such a jurisdiction) within three months after birth showing that the birth occurred in such jurisdiction and the date of birth or the individual's age at the time the record was made; **(2)**Evidence of civil service employment by the U.S. government before June 1, 1976; **(3)**Early school records (preferably from the first school) showing the date of admission to the school, the child's date and place of birth, and the name(s) and place(s) of birth of the parent(s); **(4)**Census record showing name, U.S. citizenship or a U.S. place of birth, and date of birth or age of applicant; **(5)**Adoption Finalization Papers showing the child's name and place of birth in one of the 50 States, the District of Columbia, Puerto Rico (on or after January 13, 1941), Guam, the U.S. Virgin Islands (on or after January 17, 1917), American Samoa, Swain's Island or the Northern Mariana Islands (unless the person was born to foreign diplomats residing in such a jurisdiction) or, where adoption is not finalized and the State or other jurisdiction listed above in which the child was born will not release a birth certificate prior to final adoption, a statement from a state-approved adoption agency showing the child's name and place of birth in one of such jurisdictions (NOTE: the source of the information must be an original birth certificate and must be indicated in the statement); or **(6)**Any other document that establishes a U.S. place of birth or in some way indicates U.S. citizenship (e.g., a contemporaneous hospital record of birth in that hospital in one of the 50 States, the District of Columbia, Puerto Rico (on or after January 13, 1941), Guam, the U.S. Virgin Islands (on or after January 17, 1917), American Samoa, Swain's Island or the Northern Mariana Islands (unless the person was born to foreign diplomats residing in such a jurisdiction)).

Interim Guidance - Documentary Evidence of Status as a U.S. Non-Citizen National (Continued)

- C. Collective Naturalization:** If the applicant cannot present one of the documents listed in A or B above, the following will establish U.S. citizenship for collectively naturalized individuals: **(1) Puerto Rico:** Evidence of birth in Puerto Rico on or after April 11, 1899 and the applicant's statement that he or she was residing in the U.S., a U.S. possession or Puerto Rico on January 13, 1941; or Evidence that the applicant was a Puerto Rican citizen and the applicant's statement that he or she was residing in Puerto Rico on March 1, 1917 and that he or she did not take an oath of allegiance to Spain. **(2) U.S. Virgin Islands:** Evidence of birth in the U.S. Virgin Islands, and the applicant's statement of residence in the U.S., a U.S. possession or the U.S. Virgin Islands on February 25, 1927; The applicant's statement indicating resident in the U.S. Virgin Islands as a Danish citizen on January 17, 1917 and residence in the U.S., a U.S. possession or the U.S. Virgin Islands on February 25, 1927, and that he or she did not make a declaration to maintain Danish citizenship; or Evidence of birth in the U.S. Virgin Islands and the applicant's statement indicating residence in the U.S., a U.S. possession or territory or the Canal Zone on June 28, 1932. **(3) Northern Mariana Islands (NMI) (formerly part of the Trust Territory of the Pacific Islands (TTPI)):** Evidence of birth in the NMI, TTPI citizenship and residence in the NMI, the U.S., or a U.S. territory or possession on November 3, 1986 (NMI local time) and the applicant's statement that he or she did not owe allegiance to a foreign state on November 4, 1986 (NMI local time); Evidence of TTPI citizenship, continuous residence in the NMI since before November 3, 1981 (NMI local time), voter registration prior to January 1, 1975 and the applicant's statement that he or she did not owe allegiance to a foreign state on November 4, 1986 (NMI local time); or Evidence of continuous domicile in the NMI since before January 1, 1974 and the applicant's statement that he or she did not owe allegiance to a foreign state on November 4, 1986 (NMI local time). Note: If a person entered the NMI as a nonimmigrant and lived in the NMI since January 1, 1974, this does not constitute continuous domicile and the individual is not a U.S. citizen.
- D. Derivative Citizenship:** If the applicant cannot present one of the documents listed in A or B above, you should make a determination of derivative U.S. citizenship in the following situations: **(1)** Applicant born abroad to two U.S. citizen parents: Evidence of the U.S. citizenship of the parents and the relationship of the applicant to the parents, and evidence that at least one parent resided in the U.S. or an outlying possession prior to the applicant's birth. **(2)** Applicant born abroad to a U.S. citizen parent and a U.S. non-citizen national parent: Evidence that one parent is a U.S. citizen and that the other is a U.S. non-citizen national, evidence of the relationship of the applicant to the U.S. citizen parent, and evidence that the U.S. citizen parent resided in the U.S., a U.S. possession, American Samoa or Swain's Island for a period of at least one year prior to the applicant's birth. **(3)** Applicant born out of wedlock abroad to a U.S. citizen mother: Evidence of the U.S. citizenship of the mother, evidence of the relationship to the applicant and, for births on or before December 24, 1952, evidence that the mother resided in the U.S. prior to the applicant's birth or, for births after December 24, 1952, evidence that the mother had resided, prior to the child's birth, in the U.S. or a U.S. possession for a period of one year. **(4)** Applicant born in the Canal Zone or the Republic of Panama: A birth certificate showing birth in the Canal Zone on or after February 26, 1904 and before October 1, 1979 and evidence that one parent was a U.S. citizen at the time of the applicant's birth; or A birth certificate showing birth in the Republic of Panama on or after February 26, 1904 and before October 1, 1979 and evidence that at least one parent was a U.S. citizen and employed by the U.S. government or the Panama Railroad Company or its successor in title.

Interim Guidance - Documentary Evidence of Status as a U.S. Non-Citizen National (Continued)

E. All other situations where an applicant claims to have a U.S. citizen parent and an alien parent, or claims to fall within one of the above categories but is unable to present the listed documentation: (1) If the applicant is in the U.S., refer him or her to the local INS office for determination of U.S. citizenship; (2) If the applicant is outside the U.S., refer him or her to the State Department for a U.S. citizenship determination. (3) Adoption of Foreign-Born Child by U.S. Citizen: If the birth certificate shows a foreign place of birth and the applicant cannot be determined to be a naturalized citizen under any of the above criteria, obtain other evidence of U.S. citizenship; Since foreign-born adopted children do not automatically acquire U.S. citizenship by virtue of adoption by U.S. citizens, refer the applicant to the local INS district office for a determination of U.S. citizenship if the applicant provides no evidence of U.S. citizenship. (4) U.S. Citizenship By Marriage: A woman acquired U.S. citizenship through marriage to a U.S. citizen before September 22, 1922. Ask for: Evidence of U.S. citizenship of the husband, and evidence showing the marriage occurred before September 22, 1922. Note: If the husband was an alien at the time of the marriage, and became naturalized before September 22, 1922, the wife also acquired naturalized citizenship. If the marriage terminated, the wife maintained her U.S. citizenship if she was residing in the U.S. at that time and continued to reside in the U.S. (5) Applicants With Disabilities and Nondiscrimination: If an applicant has a disability that limits the applicant's ability to provide the required evidence of citizenship or nationality (e.g., mental retardation, amnesia, or other cognitive, mental or physical impairment), you should make every effort to assist the individual to obtain the required evidence. In addition, you should not discriminate against applicants on the basis of race, national origin, gender, religion, age or disability.

Interim Guidance - Documentary Evidence of Status as a “Qualified Alien”

The documents listed below will, when combined with satisfactory proof of identity (which will come from the document itself if it bears a photograph of the person to whom it relates), establish that an applicant falls within one of the categories of “qualified alien” for purposes of title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. Under the Immigration and Nationality Act (the “INA”), all aliens over the age of 14 who remain in the United States for longer than 30 days are required to register with the Immigration and Naturalization Service (the “INS”) and obtain an alien registration document. All aliens over the age of 18 who receive a registration document are required to carry it with them at all times. With certain exceptions (e.g., Canadian visitors), aliens entering the U.S. are normally issued a registration document (e.g., an INS Form I-94) at the time of entry. The documents listed below that are registration documents are indicated with an asterisk (“*”). Each of the documents listed below will demonstrate lawful status, and you should not require presentation of a registration document if the applicant presents one of the other legally acceptable documents that reasonably appears on its face to be genuine and to relate to the person presenting it. However, if the document presented is not a registration document and does not on its face reasonably appear to be genuine or to relate to the person presenting it, it is appropriate to ask the applicant to produce his or her registration document as additional evidence of immigration status, so long as the request is not made for a discriminatory reason. Presentation of a registration document listed below that reasonably appears on its face to be genuine and to relate to the person presenting it (or to satisfy a higher applicable standard) will often obviate the need to verify the applicant’s immigration status with the INS; if the applicant presents a registration document that does not meet this standard, sending the INS a copy of the document will assist it in verifying the applicant’s status quickly and accurately.

Alien Lawfully Admitted for Permanent Residence

*INS Form I-551 (Alien Registration Receipt Card, commonly known as a “green card”); or
Unexpired Temporary I-551 stamp in foreign passport or on *INS Form I-94.

Asylee

*INS Form I-94 annotated with stamp showing grant of asylum under section 208 of the INA;
*INS Form I-688B (Employment Authorization Card) annotated “274a.12(a)(5)”;
*INS Form I-766 (Employment Authorization Document) annotated “A5”;
Grant letter from the Asylum Office of INS; or
Order of an immigration judge granting asylum.

Refugee

*INS Form I-94 annotated with stamp showing admission under Sec. 207 of the INA;
*INS Form I-688B (Employment Authorization Card) annotated “274a.12(a)(3)”;
*INS Form I-766 (Employment Authorization Document) annotated “A3”; or
INS Form I-571 (Refugee Travel Document).

Interim Guidance - Documentary Evidence of Status as a “Qualified Alien” (Continued)**Alien Paroled Into the U.S. for a Least One Year**

*INS Form I-94 with stamp showing admission for at least one year under section 212(d)(5) of the INA. (Applicant cannot aggregate periods of admission for less than one year to meet the one- year requirement.)

Alien Whose Deportation or Removal Was Withheld

*INS Form I-688B (Employment Authorization Card) annotated “274a.12(a)(10)”;

*INS Form I-766 (Employment Authorization Document) annotated “A10”; or

Order from an immigration judge showing deportation withheld under Sec. 243(h) of the INA as in effect prior to April 1, 1997, or removal withheld under Sec. 241(b)(3) of the INA.

Alien Granted Conditional Entry

*INS Form I-94 with stamp showing admission under Sec. 203(a)(7) of the INA;

*INS Form I-688B (Employment Authorization Card) annotated “274a.12(a)(3)”;

*INS Form I-766 (Employment Authorization Document) annotated “A3.”

Cuban/Haitian Entrant

*INS Form I-551 (Alien Registration Receipt Card, commonly known as a “green card”) with the code CU6, CU7, or CH6

Unexpired temporary I-551 stamp in foreign passport or on

*INS Form I-94 with the code CU6 or CU7; or

INS Form I-94 with stamp showing parole as “Cuba/Haitian Entrant” under Section 212(d)(5) of the INA.

Alien Who Has Been Battered or Subjected to Extreme Cruelty

Guidance as to the requirements that must be met for an alien to fall within this category of qualified alien is set forth in Exhibit B. Note that Title IV, as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, contains provisions requiring that, upon the effective date of the new affidavit of support (required under section 213A of the Act), when determining eligibility for federal means-tested public benefits and the amount of such benefits to which an alien is entitled, the income and resources of the alien be deemed to include those of any person executing an affidavit of support on behalf of the alien and that person’s spouse. Certain exceptions are made for indigent qualified aliens and for qualified aliens who (or whose children) have been battered or subjected to extreme cruelty in the U.S. by a spouse, parent or member of the spouse or parent’s family and for qualified alien children whose parents have been subjected to such abuse.

Expired or Absent Documentation

If an applicant presents expired documents or is unable to present any documentation evidencing his or her immigration status, refer the applicant to the local INS office to obtain documentation of status. In unusual cases involving applicants who are hospitalized or medically disabled, or who can otherwise show good cause for their inability to present documentation, and for whom securing such documentation would constitute an undue hardship, if the applicant can provide an alien registration number, you may file INS Form G-845 and Supplement, along with the alien registration number and a copy of any expired INS document presented, with the local INS office to verify status. As with any documentation of immigration status, you should confirm that the status information you receive back from INS pertains to the applicant whose identity you have verified.

Interim Guidance - Documentary Evidence of Status as a “Qualified Alien” (Continued)**Receipt for Replacement Document**

If an applicant presents a receipt indicating that he or she has applied to the INS for a replacement document for one of the documents identified above, file INS Form G-845 and Supplement along with a copy of the receipt with the local INS office to verify status. Upon return receipt of information from INS, confirm that it pertains to the applicant whose identity you have verified. You should ask to see the replacement document at a later date.

Applicants with Disabilities and Nondiscrimination

If an applicant has a disability that limits the applicant’s ability to provide the required evidence of immigration status (.e.g., mental retardation, amnesia, or other cognitive, mental or physical impairment), you should make every effort to assist the individual to obtain the required evidence. In addition, you should not discriminate against applicants on the basis of race, national origin, gender, religion, age or disability.